IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1976

Case No. 76-1674

NORMAN STEPHENSON,
STEPHENSON ENTERPRISES,
INC., a corporation, and
LAKE BUTLER APPAREL
COMPANY, a Florida corporation,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the Final Judgment and Opinion of the Supreme Court of the State of Florida entered on November 30, 1976 and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported in 342 So.2d 60 and is printed in the Appendix at page A. 12. The Final Judgment and Opinion of the District Court of Appeal, First District, State of Florida, is reported at 329 So.2d 373 and reprinted in the Appendix at page A. 5. The final decision and Order of the trial court, the Circuit Court of the Eighth Judicial Circuit in and for Baker County, Florida, is unreported and is reprinted in the Appendix at page A. 1.

JURISDICTION

The Final Judgment and Opinion of the Supreme Court of Florida was entered on November 30, 1976. A. 12. A timely Petition for Rehearing was denied on February 28, 1977. A. 18. The Final Decision and Order of the Supreme Court of Florida upheld the constitutional validity of Section 570.15, Florida Statutes (1975), against contentions that the statute was repugnant to the United States Constitution, Amendments IV and XIV.

Notice of Appeal from the Decision and Order of the Supreme Court of Florida was filed in the Supreme Court of Florida on March 7, 1977. A. 19. The Supreme Court of the United States has jurisdiction to review, by direct appeal, the Final Judgment and Decision of the Supreme Court of Florida pursuant to 28 U.S.C. §§1257(2), 2101(c). The following decisions are believed to sustain the jurisdiction of the Supreme Court of the United States to review the judgment on appeal in this case. See, *e.g.*, *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *Cohen v. California*, 403 U.S. 15 (1971).

STATUTES INVOLVED

The statutes of the State of Florida that are involved are §§570.15 and 570.44(3), Florida Statutes, which established the Department of Agriculture and Consumer Services for the State of Florida. Section 570.15, Florida Statutes (as amended, 1975), reads as follows:

> "570.15 Access to places of business and vehicles
>
> "(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:
>
> 1. Places of business;
> 2. Factories;
> 3. Farm buildings;
> 4. Carriages;
> 5. Railroad cars;
> 6. Trucks;
> 7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
> 8. Truck and motor vehicle trailers;
> 9. Vessels; and
> 10. All records pertaining thereto;
>
> used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

"(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s.933.19.

"(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation of the provisions of this chapter, the rules of the department, or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

"(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083." Florida Statutes §570.15.

Section 570.44(3), Florida Statutes, sets forth the powers and duties of the Department of Agriculture's inspection division and reads as follows:

"570.44(3) Road guards.—It shall be the duty of this section to operate and manage those road guard inspection stations of the state and to perform the

general inspection activities relating to the movement of agricultural, horticultural and livestock products and commodities as directed by the commissioner and the division director."

The Supreme Court of Florida held that the operation of Florida Statutes §570.15, when construed in conjunction with Florida Statutes §570.44(3), did not deprive Appellants of their right to be free from unreasonable searches and seizures, their right to due process of law, and their right to privacy and to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

QUESTIONS PRESENTED

Section 570.15, Florida Statutes, provides for the compulsory stopping and inspection of all trucks and trailers and a broad class of other commercial vehicles. The statute further provides that if the operator of any truck or any motor vehicle trailer passes an official Department of Agriculture road-guard inspection station without first stopping for inspection, the operator may be found guilty of a criminal misdemeanor. The principal questions presented are: (1) whether these statutory provisions are unconstitutional in that they provide for the indiscriminate stopping of all trucks and trailers and other commercial motor vehicles on the highways of the State of Florida for agricultural inspection purposes regardless of whether there is probable cause, or even mere suspicion, to believe that the vehicles are involved in transporting agricultural products, and (2) whether the statute in question, facially and as applied to Appellants is repugnant to Appellants' right to be free from unreasonable search and seizure, their right to due process and equal protection of the law, their right

to privacy and the right to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

Stephenson Enterprises, Inc. and Lake Butler Apparel Company are clothing manufacturers. Stephenson Enterprises, Inc. is located in Folkston, Georgia, while Lake Butler Apparel Company is located in Lake Butler, Florida. The Appellant, Norman Stephenson, is a principal officer in both companies. The geographical proximity between the two manufacturing operations located in Georgia and Florida, respectively, necessitates frequent passage of Florida Department of Agriculture road-guard inspection stations. These road-guard inspection stations are established pursuant to Fla.Stat. §§570.15 and 570.44(3) for the purpose of stopping and inspecting all trucks and trailers and other commercial vehicles to determine whether agricultural, horticultural and livestock products are being transported and if so whether such products are in compliance with various state and federal laws and marketing orders. See Fla.Stat. Chapters 601 and 603. In addition to road-guard stations located at fixed points, the Florida Department of Agriculture also utilizes roving patrol guards who selectively stop the motoring public traveling on highways where road-guard inspection stations are not located.

During frequent trips between their respective Florida and Georgia manufacturing sites, Appellants have been stopped, arrested and subjected to humiliation for refusing to consent to compulsory stoppings and detentions at Florida's Department of Agriculture road-guard inspection stations. At no time were Appellants' vehicles carrying any agricultural products or any other products regulated by the Department of Agriculture and Consumer Services. The only items ever transported in Appellants' vehicles were clothing apparel and textiles. On one occasion, Norman Stephenson was charged with interfering with a Department of Agriculture employee for refusing to stop at a road-guard station maintained by the Florida Department of Agriculture. See Fla.Stat. §570.16.[1/] Prior to his arrest, he had been stopped by a roving patrol guard who noted that Appellants' truck was loaded with "something."

Some vehicles are permitted to pass the Department of Agriculture's road-guard inspection stations without stopping for inspection. Appellants, on the other hand, were frequently forced to stop their vehicles for inspection at the Macclenny, Baker County, Florida station. Appellants were not forced to stop at other Department of Agriculture road-guard inspection stations.

A. Trial Court Proceedings

In response to these indiscriminate stoppings of Appellants' vehicles by the Florida Department of Agriculture, Appellants filed a complaint for declaratory judgment and injunction against the Department of Agriculture and Consumer Services, State of Florida, in the Eighth Judicial Circuit Court in and for Baker County, Florida. In their complaint, Appellants sought a declaration of their constitutional rights and the purported statutory and constitutional authority of the Department of Agriculture to compel Appellants' vehicles to stop, without probable cause or any arrest or search warrant, for inspections at Department of Agriculture road-guard stations. Appellants contended in

1/ The criminal charges were later dismissed during the pendency of this case in the Baker County Circuit Court.

the trial court that the Department of Agriculture had no statutory authority to require Appellants' vehicles to stop for inspection at the road-guard stations and that the Department's attempts to compel Appellants' vehicles to stop for inspection violated Appellants' constitutional rights of due process of law, equal protection of the law, and the right to be free from unreasonable searches and seizures, the right to privacy and the right to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

Appellants filed a Motion for Summary Judgment in the Baker County Circuit Court on February 20, 1974. The trial court entered its order denying Appellants' Motion for Summary Judgment on April 23, 1974. A. 1. The trial court held that the Department of Agriculture had both constitutional and statutory authority under Florida Statutes §§570.15 and 570.44(3) to require all trucks operating on public highways to stop for inspection to initially ascertain what was being transported. The trial court further held that the statutory scheme for stopping and inspecting was a valid exercise of the State's police power and was not repugnant to either state or federal constitutional provisions.

B. Attempted Direct Appeal to the Supreme Court of Florida

Appellants timely filed a Notice of Direct Appeal from the trial court's order denying the Motion for Summary Judgment to the Supreme Court of the State of Florida. That Court subsequently entered an order dated May 7, 1975, transferring the case to the District Court of Appeal, First District, State of Florida.

C. Proceedings Before the District Court of Appeal, First District, State of Florida

After the case had been transferred by the Supreme Court of Florida to the First District Court of Appeal, and before any decision was rendered by the District Court of Appeal, Section 570.15, Florida Statutes, was amended by the Florida Legislature. See Fla.Stat. §570.15 (July 1, 1975). Before the statute was amended, there were no specific criminal prohibitions against a vehicle operator's refusal to stop for inspections at Department of Agriculture road-guard stations. *But see*, §570.16, Fla.Stat. (1974).

The amended version of Florida Statutes §570.15 gave the Department of Agriculture explicit statutory authority to require certain classes of motor vehicles used in the production, transportation, or manufacture of products regulated by the Department to stop at all road-guard stations. A refusal to stop by any truck or trailer operator after July 1, 1975, was made a criminal misdemeanor.

The District Court held that the operation of the amended statute facially and as it might be prospectively applied to Appellants did not deprive them of their right to be free from unreasonable searches and seizures, their right to due process of law, their right to equal protection of the law, their right to privacy and their right to travel freely on the highways of the United States as guaranteed by both the federal and state Constitutions. See 329 So.2d at 376, A. 9. The District Court also concluded that the stopping of Appellants' vehicles and all other trucks and trailers for the purpose of inspection, without a warrant and without probable cause to believe that any violation of the law had been committed, was not a search and not an unreasonable seizure prohibited by the Fourth Amendment to the United

States Constitution. 329 So.2d at 377; A. 11. The statutory requirement that all trucks and trailers stop at inspection stations for agricultural inspections was held to constitute a reasonable and valid exercise of the State's police power. 329 So.2d at 376; A. 11.

D. Proceedings Before the Supreme Court of Florida

Appellants thereafter timely appealed the decision of the District Court of Appeal, First District, to the Supreme Court of Florida. The Decision and Order of the District Court of Appeal was affirmed by the Supreme Court of Florida on November 30, 1976. 342 So.2d 60; A. 12. The Supreme Court of Florida also held that §570.15, Fla.Stat. (1975), was constitutional and did not deprive Appellants of their right to be free from unreasonable searches and seizures, the right to due process of law and equal protection of the law, and the right to privacy and to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and similar provisions of the Florida Constitution. 342 So.2d 60; A. 15. The Supreme Court of Florida further held that §570.15, Fla.Stat., gave the Department of Agriculture statutory authority to require all trucks and trailers to stop at agricultural inspection stations for purposes of inspection regardless of whether such trucks and trailers were used in the production, manufacture, storage, sale or transportation of any article or product regulated by the Department of Agriculture.

Appellants timely filed a Petition for Rehearing in the Supreme Court of Florida. The Petition for Rehearing was denied on February28, 1977. A. 18. Appellants thereafter timely filed on March 7, 1977, a Notice of Appeal seeking review in this Court of the Supreme Court of Florida's final Decision and Order.

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

A. Constitutional Questions Arising Under the Fourth and Fourteenth Amendments

The decision of the Supreme Court of Florida dilutes the safeguards imposed by the Fourth and Fourteenth Amendments to the United States Constitution on search and seizure powers exercised by State agricultural inspectors. The Fourth and Fourteenth Amendment constitutional safeguards were designed to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973); *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967); *See v. Seattle*, 387 U.S. 541 (1967). The Court below has construed §570.15, Fla. Stat. in conjunction with §570.44(3), Fla.Stat., to permit the indiscriminate stopping of all trucks, trailers and motor vehicles, except private passenger automobiles without trailers in tow and recreational vehicles, for purposes of agricultural inspection irrespective of whether such vehicles are transporting agricultural products. These stoppings and inspections are carried out at both fixed locations and by roving patrol inspectors.[2/] See, *Almeida-Sanchez v. United States, supra.* They are carried out without probable cause or even suspicion to believe that the vehicles stopped are violating any law or are being used in the transportation of products regulated by the Department of Agriculture. *C.f., United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

2/ Once a vehicle is stopped, if the operator refuses to consent to an inspection, he is detained while a search warrant is sought by the road-guard inspector. Fla.Stat. §§570.15(1)(b), (2), 570.151.

The motoring public should harbor a reasonable expectation of privacy and freedom from unreasonable governmental interference when traveling on the interstate highways of the nation. See *Carroll v. United States*, 267 U.S. 132 (1925). Compulsory stopping and inspecting of motor vehicles is a seizure of the automobile and its occupants. See *Terry v. Ohio*, 392 U.S. 1 (1968).

This Court has recently defined the constitutional limitations governing border patrol stoppings to deter the influx of illegal aliens at fixed checkpoints along international borders. See *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). In *Martinez-Fuerte*, the Court held that motor vehicles may be stopped at fixed checkpoints for brief questioning of its occupants even though there is no reason to believe the particular vehicles contain illegal aliens and that such stops are consistent with the Fourth Amendment to the United States Constitution. The Court in *Martinez-Fuerte, supra*, noted that ". . . interdicting the flow of illegal entrants from Mexico poses formidable law enforcement problems. The principal problem arises from surreptious entries . . ." 428 U.S. at 552. The holding in that case was expressly limited to fixed point international border stops to deter illegal immigration. Florida's Department of Agriculture stoppings and inspections are conducted at both fixed point road-guard stations and by roving patrol guards.

The State of Florida's interest involved in the case at bar can scarcely be equated with the protections against unreasonable and arbitrary interference with the motoring public which are at stake and which are protected by the Fourth and Fourteenth Amendments. While the flow of illegal immigrants into the United States has long been recognized as a serious national problem,[3/] the State of Florida's need

3/ See *United States v. Martinez-Fuerte, supra; Border Crisis - Illegal Aliens Out of Control*, U.S. News & World Report at p. 33 (April 25, 1977).

to stop all trucks and trailers for conducting agricultural inspections is circumspect, and more importantly, constitutes a dragnet search and seizure of a substantial segment of the motoring public. This court has long recognized that "spot checking" or indiscriminate stopping of all vehicles on the public highways is not tolerable under the Fourth Amendment. In *Carroll*, the Court noted:

> "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within this country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." (Citations omitted.) *Carroll v. United States*, 267 U.S. at 154.

More is involved here than the rights of the parties litigant. The motoring public has an important stake in the outcome. No means now exist to protect the motoring public from unreasonable stoppings and inspections by Florida Department of Agriculture road-guard inspectors. Motorists who refuse to stop for such inspections run the risk of criminal sanctions under the statutory scheme held to be constitutional by the Supreme Court of Florida. There is no emergency situation which would authorize the indiscriminate stopping of vehicles on interstate highways leading into and through the State of Florida. The agricultural

stoppings and inspections are used on the chance of finding some violation of the law without any reasonable suspicion or probable cause to believe that any law has been violated. The motoring public's right to be free from unbridled discretion and arbitrary authority and to travel freely on the highways of the United States involve constitutional implications of the highest magnitude under the Fourth and Fourteenth Amendments.

The constitutional issues at stake here were left open for future decision by this Court in *United States v. Martinez-Fuerte*, 428 U.S. at 560, N.14. This Court has jurisdiction to review the case on appeal since Florida's statutory scheme for conducting inspections and stopping the motoring public within its borders has been sustained against the contention that it is repugnant to the Fourth and Fourteenth Amendments to the United States Constitution. See 28 U.S.C. §1257(2); *Cox Broadcasting Corp. v. Cohn, supra.*

CONCLUSION

The decision of the Court below sustaining the validity of Florida's agricultural inspection scheme presents constitutional questions that go to the heart of the Fourth and Fourteenth Amendment limitations on search and seizure powers. These questions are so substantial that they require plenary consideration with briefs on the merits and oral argument for their resolution.

For these and the foregoing reasons, Appellants respectfully suggest that the Court enter its order noting probable jurisdiction and reversing the decision of the Supreme Court of Florida.

Respectfully submitted,

CAVEN & CLARK, P.A.

By Allan P. Clark

Allan P. Clark

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been furnished to Robert A. Chastain, General Counsel, State of Florida, Department of Agriculture and Consumer Services, and to Leslie McLeod, Jr., Esquire, Resident Counsel, State of Florida, Department of Agriculture and Consumer Services, 515 Mayo Building, Tallahassee, Florida 32304, by mail this 26 day of May, 1977.

Allan P. Clark

Attorney

APPENDIX

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IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT, IN
AND FOR BAKER COUNTY, FLORIDA
CASE NO. 73-147

NORMAN STEPHENSON, LAKE
BUTLER APPAREL COMPANY,
a corporation, and STEPHENSON
ENTERPRISES, INC., a corporation,
Plaintiffs,

vs.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,
Defendant.

ORDER DENYING SUMMARY JUDGMENT

Plaintiffs primarily contend in their Complaint and Motion for Summary Judgment that since their trucks are never used to transport agricultural products the Defendant unit of the State of Florida is without statutory authority to either stop their vehicles on the public highways, or to require them to stop at Defendant's road guard stations for inspection. They further contend that Defendant's conduct in this respect is arbitrary and discriminatory and violates their constitutional rights of due process, equal protection of the laws, right to be free from unreasonable searches, their right to privacy, and the right to travel freely.

The Plaintiffs are so outraged at the conduct complained of that they plead and the evidence shows that they refuse

to stop for inspection notwithstanding uniformed officers in marked automobiles, and well placed signs advising truck drivers to stop at guard stations.

There are two pertinent statutes, the construction of which, is necessary for a determination of the issues involved. Section 570.15, F.S. reads in part as follows:

> 570.15 *"Access to place of business.* The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents and other employees and officers of the department *shall have full access* at all reasonable hours to all places of business, factories, farm buildings, carriages, railroad cars, *motor vehicles* and vessels *used in the production, manufacture, storage, sales or transportation within the state of any food product or agricultural product or any article or product with respect of which any authority is conferred by law on the department* and all records pertaining thereto . . ." (Emphasis supplied)

The salient provision of this statute authorizes officers of the department to have full access to motor vehicles used in the transportation of an agricultural product.

Section 570.44(3), F.S. entitled "Division of Inspection; Powers and Duties; (3) Road Guards" provides:

> "It shall be the duty of this section to operate and manage those roadguard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural and livestock products and commodities as directed by the commissioner and the divisional director."

Inspection laws are regulations designed to promote the

public health, safety and welfare in order to determine whether there has been compliance with prescribed standards.

Subject to the paramount right of Congress to regulate commerce with foreign nations and among the states under Article 1, Section 10, Clause 2, of the United States Constitution, a state has the right to enact inspection laws under its police power. 17 FLA. JUR., INSPECTION LAWS, §2.

In *Johnson v. State*, 128 So. 853 (Fla. 1930), the Supreme Court of Florida upheld the constitutionality of the citrus inspection code saying on page 857:

> "The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest as to be within the police power of the sovereign."

There has been no showing that Plaintiffs have been treated or subjected to any measure or procedure differently from anyone else operating a truck on the public highways of this state, or when driving a truck up to and passing an inspection station.

There has been some indication that one may qualify for a permit to avoid the onerous result of being stopped or having to stop at a station, but that is not an issue as neither of the Plaintiffs has applied for such safe passport.

Plaintiffs' argument and testimony that they never transport an agricultural product begs the question. The officers are charged by the law and the regulations adopted pursuant to the code to satisfy themselves that this is true. See Section 570.48, Florida Statutes.

It would be a strange anomoly if one could avoid being inspected or even stopped for inquiry as to what he was hauling by the expedient of an injunction predicated upon his oath that he never had and did not intend to transport agricultural products.

This would defeat the uniformity of the operation of the inspection law which is an essential requisite, and would result in unreasonable discrimination and would itself render the statute invalid. 17 FLA.JUR., INSPECTION LAWS, §3.

The Defendant's actions to ascertain what Plaintiffs are transporting have been reasonable, and no abuse of its discretion has been shown.

It is within the police powers of the state to cause to stop for inspection all trucks operating on the public highways.

Accordingly, it is

ORDERED AND ADJUDGED that the Motion for Summary Judgment is and the same is hereby denied, and the injunctive relief sought by Plaintiffs is denied.

DONE AND ORDERED in Chambers at Gainesville, Alachua County, Florida, this 22nd day of April, A.D., 1974.

/s/ John J. Crews

JOHN J. CREWS, Circuit Judge

. . . .

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A.D. 1976.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

CASE NO. Y-320

NORMAN STEPHENSON,
LAKE BUTLER APPAREL
COMPANY, et al,

Appellants,

vs.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Appellee.

Opinion filed March 30, 1976.

An Appeal from the Circuit Court for Baker County.
John J. Crews, Judge.

Charles C. Adams, for Appellants.

Robert A. Chastain and Leslie McLeod, Jr., for Appellee.

McCORD, J., Acting Chief Judge,

This is an appeal from an order denying appellants' motion for summary judgment and injunctive relief. The appeal was taken to the Supreme Court of Florida and was transferred by that court to this court, the Supreme Court finding that the issues involved are matters within the jurisdiction of this court.

By their complaint, appellants contended in the trial court that appellee, the Department of Agriculture and Consumer Services of the State of Florida, was without statutory or constitutional authority to require their trucks to stop at appellee's road-guard stations for agricultural inspection, alleging their trucks do not carry agricultural products. They sought an injunction to prevent appellee from requiring their trucks to stop. The trial judge, in his order denying appellants' motion for summary judgment, pointed out that the Supreme Court of Florida in Johnson v. State, Fla. 128 So. 853 (1930), upheld the constitutionality of the citrus inspection code saying:

> "The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest as to be within the police power of the sovereign."

The trial court then found that the appellee's actions to ascertain what agricultural products, if any, appellants are transporting have been reasonable and no abuse of discretion has been shown. The trial court further pointed out that the agricultural inspection laws are "regulations designed to promote the public health, safety and welfare in order to determine whether there has been compliance with prescribed standards." The court made the further affirmative finding:

> "It is within the police powers of the state to cause to stop for inspection all trucks operating on the public highways."

The statutes which purportedly authorized appellee to require appellants' trucks to stop for agricultural inspection are Sections 570.15 and 570.44(3), Florida Statutes. Subsequent to the entry of the trial court's order appealed from, Section 570.15, Florida Statutes, was amended. This being a suit in which appellants seek prospective relief, we will consider the law as it exists at this time rather than as it existed at the time of the entry of the order appealed from. See Florida East Coast Railway Company v. Rouse, Fla., 194 So.2d 260 (1967); Phillips v. Phillips, Fla.App. (1st), 287 So.2d 149 (1973).

§570.44(3), Florida Statutes, relating to the powers and duties of appellee's Division of Inspection, provides as follows:

> "BUREAU OF ROAD GUARDS.—It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director."

§570.15, Florida Statutes, *1975*, provides in pertinent part as follows:

> "(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers at the department shall have full access at all reasonable hours to all:

1. ***
2. ***
3. ***
4. ***
5. ***
6. Trucks;
7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
8. Truck and motor vehicle trailers;
9. ***
10. All records pertaining thereto;

used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s.993.19.

(c) ***

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

Appellants' affidavit in support of their motion for summary judgment stated that their trucks are used to transport apparel, textiles and items related to the manufacture of

clothing; that the trucks are never used to transport agricultural, horticultural, or livestock products or other products regulated by appellee. Appellants contend that to require their trucks to stop for inspection at appellee's inspection stations is a deprivation of appellants' right to be free from unreasonable searches and seizures, their right to due process of law, their right to equal protection of the law, their right to privacy and to travel freely on the highways of the United States, as guaranteed by the United States Constitution and the Constitution of Florida. We disagree.

Appellee has full authority under the police power of the State of Florida to conduct agricultural inspections of the vehicles mentioned in the above statutes provided such inspections are made pursuant to the terms of said statutes. The inspections are necessary in order that appellee may carry out its responsibilities relating to disease control, fruit and vegetable grading and other similar matters required by law, appellee's regulations and federal marketing orders. Under subsection (2) of section 570.15 above, all trucks and motor vehicle trailers [not limited to those mentioned in subsection (1)] are required to stop at appellee's road-guard inspection stations for inspections. Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of "any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department." Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreason-

able search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitutional right of appellant.

From the record it appears that appellee has a procedure whereby a concern may qualify for a permit through which its trucks, upon stopping, will be given clearance through exhibiting their bills of lading, but appellants have not sought to avail themselves of this procedure.

We have considered the opinion of the United States Court of Appeals, Ninth Circuit, in United States v. Martinez-Fuerte, 514 F.2d 308 (1975), which holds that federal immigration agents cannot constitutionally *stop* automobiles on the chance of discovering something illegal; that such is a violation of the Fourth Amendment of the Constitution of the United States. Also, in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Supreme Court said:

> "It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime--'arrests' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."

There the court went on to hold that due regard for the practical necessities of law enforcement justifies something less than probable cause for brief informal detention and ruled that a "founded suspicion" is all that is necessary.

As stated by the District Court of Appeal, Fourth District, in Gustafson v. State, Fla.App., 243 So.2d 615; reversed on other grounds, State v. Gustafson, Fla., 258 So.

2d 1 (1972); Aff., 414 U.S. 260, 38 L.Ed.2d 456, 94 S.Ct. 488 (1973):

> "Florida courts have recognized use of detentions which fall short of technical arrests. Chance v. State, Fla. App. 1967, 202 So.2d 825 (investigation of a liquor store robbery); Lowe v. State, Fla.App. 1966, 191 So.2d 303 (investigation of robbery suspects). A license check evidently falls into this category. City of Miami v. Aronovitz, Fla. 1959, 114 So.2d 784."

The foregoing cases, with the exception of those relating to drivers' license checks, all dealt with criminal investigations. The inspections authorized by statute in the case sub judice fall in a different category. Agricultural inspections appear to be more nearly akin to drivers' license checks than detentions for criminal investigations, but we have found no authority and none has been cited to us dealing with agricultural inspections of motor vehicles.

It is our view that the requirement of the foregoing statute that all trucks and trailers stop at the inspection stations of appellee for agricultural inspection is entirely reasonable and is a valid exercise of the police power of the state. The stopping of a vehicle for such purpose is not a search and is not an *unreasonable* seizure. Only unreasonable searches and seizures are prohibited by the Fourth Amendment.

Affirmed.
SMITH and MILLS, JJ., CONCUR.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1976

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DETERMINED

CASE NO. 49,305

DCA CASE NO. Y-320

NORMAN STEPHENSON,
LAKE BUTLER APPAREL
COMPANY, a corporation,
and STEPHENSON ENTERPRISES,
INC., a corporation,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Appellee.

Opinion filed November 30, 1976
An Appeal from the District Court of Appeal, First District
Allan P. Clark of Caven and Clark, for Appellants
Robert A. Chastain and Leslie McLeod, Jr., for Appellee

ROBERTS, J.

We have for review by direct appeal the decision of the District Court of Appeal, First District, in Stephenson, et

al. v. Department of Agriculture and Consumer Services reported at 329 So.2d 373, which passes on the constitutional validity of Section 570.15, Florida Statutes (1975), thereby vesting jurisdiction in this Court pursuant to Article V, Section 3(b)(1), Florida Constitution.

The decision of the District Court under review succinctly states the pertinent facts relative to this appeal. "By their complaint, appellants contend in the trial court that appellee, the Department of Agriculture and Consumer Services of the State of Florida, was without statutory or constitutional authority to require their trucks to stop at appellee's road-guard stations for agricultural inspection, alleging their trucks do not carry agricultural products. They sought an injunction to prevent appellee from requiring their trucks to stop. The trial judge, in his order denying appellants' motion for summary judgment, pointed out that the Supreme Court of Florida in Johnson v. State, Fla. 128 So. 853 (1930), upheld the constitutionality of the citrus inspection code saying:

> 'The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest as to be within the police power of the sovereign.'

"The trial court then found that the appellee's actions to ascertain what agricultural products, if any, appellants are transporting have been reasonable and no abuse of discretion has been shown. The trial court further pointed out that the agricultural inspection laws are 'regulations designed to promote the public health, safety and welfare in order to determine whether there has been compliance with prescribed standards.' The court made the further affirmative finding:

'It is within the police power of the state to cause to stop for inspection all trucks operating on the public highways.' "

The statutes under consideration authorizing appellee to require appellants' trucks to stop for agricultural inspections are Sections 570.15 (which was amended after the trial court's order) and 570.44(3), Florida Statutes. Since appellants sought prospective relief by their action for declaratory judgment, the District Court of Appeal, First District, considered the law as it existed at the time of the appeal rather than at the time of the entry of the order appealed.

The subject statutory provisions provide:

"570.44(3) BUREAU OF ROAD GUARDS.--It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director.

"570.15 Access to places of business and vehicles.

"(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers at the department shall have full access at all reasonable hours to all:

1. * * *
2. * * *
3. * * *
4. * * *
5. * * *
6. Trucks;

7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
8. Truck and motor vehicle trailers;
9. * * *
10. All records pertaining thereto;

used in the production, manufacture, storage, sale or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19.

(c) * * *

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

Affirming the trial court, the District Court of Appeal opined, and we agree:

"Appellee has full authority under the police power of the State of Florida to conduct agricultural inspections of the vehicles mentioned in the above statutes provided such inspections are made pursuant to the terms of said statutes. The inspections are necessary in order that appellee may carry

out its responsibilities relating to disease control, fruit and vegetable grading and other similar matters required by law, appellee's regulations and federal marketing orders. Under subsection (2) of section 570.15 above, all trucks and motor vehicle trailers [not limited to those mentioned in subsection (1)] are required to stop at appellee's road-guard inspection stations for inspection. Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.' Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreasonable search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitutional right of appellant.

"From the record it appears that appellee has a procedure whereby a concern may qualify for a permit through which its trucks, upon stopping, will be given clearance through exhibiting their bills of lading, but appellants have not sought to avail themselves of this procedure.

* * * * * *

"The inspections authorized by statute in the case sub judice fall in a different category. Agricultural inspections appear to be more nearly akin to drivers' license checks than detentions for criminal investi-

gations, but we have found no authority and none has been cited to us dealing with agricultural inspections of motor vehicles.

"It is our view that the requirement of the foregoing statute that all trucks and trailers stop at the inspection stations of appellee for agricultural inspection is entirely reasonable and is a valid exercise of the police power of the state. The stopping of a vehicle for such purpose is not a search and is not an *unreasonable* seizure. Only unreasonable searches and seizures are prohibited by the Fourth Amendment."

Accordingly, the decision of the District Court of Appeal, First District, is hereby affirmed.

It is so ordered.

OVERTON, C.J., ADKINS, BOYD, ENGLAND and SUNDBERG, JJ., Concur

HATCHETT, J., Concurs in result only, with concurring opinion

HATCHETT, J., concurring

I concur on the authority of *United States v. Martinez-Fuerte*, _____ U.S. _____, 49 L.Ed.2d 1116, _____ S.Ct. _____ (1976).

IN THE SUPREME COURT OF FLORIDA
MONDAY, FEBRUARY 28, 1977

CASE NO. 49,305

DCA CASE NO. Y-320

NORMAN STEPHENSON, LAKE
BUTLER APPAREL COMPANY,
a corporation, and
STEPHENSON ENTERPRISES, INC.,
a corporation,

Appellants,

vs.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Appellee.

On consideration of the petition for rehearing filed by attorneys for appellants,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

cc: Hon. Raymond E. Rhodes, Clerk
Hon. Joe Dobson, Clerk
Hon. John J. Crews, Chief Judge

Hon. Allan P. Clark
of Caven & Clark
Hon. Robert A. Chastain and
Hon. Leslie McLeod, Jr.

IN THE SUPREME COURT
STATE OF FLORIDA

Case No. 49,305

NORMAN STEPHENSON, LAKE
BUTLER APPAREL COMPANY,
et al.,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Norman Stephenson, Lake Butler Apparel Company, a corporation, and Stephenson Enterprises, Inc., a corporation, the Appellants named above, hereby appeal to the Supreme Court of the United States from the final judgment and opinion affirming the Decision and Order of the District Court of Appeal, First District, entered in this action on November 30, 1976. Appellants' timely Motion for Rehearing was denied by Order entered in this action on February 28, 1977.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

CAVEN & CLARK, P.A.

By /s/ Allan P. Clark
1216 Atlantic National Bank Building
Jacksonville, Florida 32202
Attorneys for Appellants

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

Case No. 76–1674

NORMAN STEPHENSON,
STEPHENSON ENTERPRISES, INC.,
a corporation, and
LAKE BUTLER APPAREL COMPANY,
a Florida corporation,

Appellants,

v.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,
STATE OF FLORIDA,

Appellee.

On Appeal From
The Supreme Court of the State of Florida

STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO DISMISS AND/OR AFFIRM

ROBERT A. CHASTAIN
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Attorneys for Appellee

INDEX

TABLE OF AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

Case No. 76–1674

NORMAN STEPHENSON,
STEPHENSON ENTERPRISES, INC.,
a corporation, and
LAKE BUTLER APPAREL COMPANY,
a Florida corporation,

Appellants,

v.

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,
STATE OF FLORIDA,

Appellee.

On Appeal From
The Supreme Court of the State of Florida

STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO DISMISS AND/OR AFFIRM

MOTION TO DISMISS AND/OR AFFIRM

The appellee in the above styled cause moves to dismiss and/or affirm on the grounds that the appellants have failed to comply with Rule 15 of the Rules of the Supreme Court of the United States in the preparation of their

Jurisdictional Statement and that the questions on appeal are so unsubstantial as not to need further argument.

STATEMENT OF FACTS

The appellee is authorized by the provisions of Section 570.44(3), Florida Statutes, to operate and manage road-guard inspection stations in the State of Florida, in order to perform the general inspection activities relating to agriculture, horticulture and livestock products and commodities as directed by the commissioner and the division directors of the department. Similarly, in conjunction with the authority granted in Section 570.44(3), Florida Statutes, the department's employees or officers have, by authority of Section 570.15(1)(a), Florida Statutes, (as amended in 1975) full access at reasonable hours to various places including trucks; motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag; and truck and motor vehicle trailers used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department. Section 570.15(2), Florida Statutes, (1975), also provides that it shall be unlawful for any truck or any truck or motor vehicle trailer to pass any road-guard inspection station without first stopping for inspection.

The duties of the road-guard inspection special officers consist of inspecting agricultural, horticultural and livestock products to determine if they are in compliance with various state and federal laws and marketing orders and to assist in disease control in plant and animal products.

Stephenson Enterprises, Inc., and Lake Butler Apparel Company are clothing manufacturers. Stephenson Enterprises, Inc., is located in Folkston, Georgia, and Lake Butler Apparel Company is located in Lake Butler, Florida. The geographical location of the two companies necessitates frequent passage of the Florida Department of Agriculture and Consumer Services' road-guard inspection stations.

During frequent trips between their respective Florida and Georgia manufacturers, the appellants have refused to stop at the fixed road-guard inspection stations of the appellee. In one instance, the appellants were stopped by a Baker County deputy sheriff at a road block after they failed to stop at the Macclenny, Baker County, Florida station. The deputy sheriff had been called by a road-guard inspection special officer after the appellants had failed to stop at the said fixed station. On this occasion, the appellant Norman Stephenson was arrested on two counts, (1) interference with the road-guard inspector and (2) failure to obey official traffic signs. These charges were subsequently dropped during the pendency of this case in the Baker County Circuit Court.

At no time during the various encounters of the appellants and the appellee's road-guard inspection special officers have the appellants been searched with or without a search warrant and at all times the appellants have adamantly refused to allow any inspection of their enclosed vehicle.

A. Trial Court Proceedings

The appellants filed a complaint for declaratory judgment and injunction against the appellee in the Eighth Judicial Circuit Court in and for Baker County, Florida. The appellants contended that the appellee had no statutory authority to require appellants' vehicle to stop for inspection at the road-guard inspection stations and that the appellee's attempts to compel appellants' vehicle to stop for inspection violated appellants' constitutional rights to due process of

law, equal protection of the law, and the right to be free from unreasonable searches and seizures, as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

On the appellants' motion for summary judgment, the trial court held that the appellee had both the constitutional and statutory authority under Sections 570.15 and 570.44(3), Florida Statutes, (1975), to require all trucks operating on public highways to stop for inspection to initially ascertain what was being transported. The trial court further held that the statutory scheme for stopping and inspecting was a valid exercise of the state's police power and was not repugnant to either state of federal constitutional provisions.

B. Attempted Direct Appeal to the Supreme Court of Florida

Appellants timely filed a Notice of Direct Appeal from the trial court's order denying the Motion for Summary Judgment to the Supreme Court of the State of Florida. That court subsequently entered an order dated May 7, 1975, transferring the case to the District Court of Appeal, First District, State of Florida.

C. Proceedings Before the District Court of Appeal, First District, State of Florida

After the case had been transferred by the Supreme Court of Florida to the First District Court of Appeal, and before any decision was rendered by the District Court of Appeal, Section 570.15, Florida Statutes, was amended by the Florida Legislature. *See* Section 570.15, Florida Statutes, (1975).

The amended version, Section 570.15, Florida Statutes, (1975), gave the Department of Agriculture and Consumer Services explicit statutory authority to require certain

classes of motor vehicles used in the production, transportation, or manufacture of products regulated by the department to stop at all road-guard stations. A refusal to stop by any truck or trailer operator after July 1, 1975, was made a criminal misdemeanor.

The District Court held that the operation of the amended statute facially and as it might be prospectively applied to appellants did not deprive them of their right to be free from unreasonable searches and seizures, their right to due process of law, their right to equal protection of the law, their right to privacy or their right to travel freely on the highways of the United States as guaranteed by both the federal and state constitutions. *See* 329 So.2d at 376, (A-9, Appellants' Appendix). The District Court also concluded that the stopping of appellants' vehicles and all other trucks and trailers for the purpose of inspection, without a warrant and without probable cause to believe that any violation of the law had been committed, was not a search and not an unreasonable seizure prohibited by the Fourth Amendment to the United States Constitution. 329 So.2d at 377; (A-11, Appellants' Appendix). The statutory requirement that all trucks and trailers stop at inspection stations for agricultural inspections was held to constitute a reasonable and valid exercise of the state's police power. 329 So.2d at 377; (A-11, Appellants' Appendix).

The District Court also held that the inspections authorized by the statutes in question appeared to be more akin to drivers' license checks than to detentions for criminal investigation, and that the stopping of such vehicle for such purpose is not a search and is not an unreasonable seizure; (A-11, Appellants' Appendix).

D. Proceedings Before the Supreme Court of Florida

Appellants thereafter timely appealed the decision of the District Court of Appeal, First District, to the Supreme

Court of Florida. The Decision and Order of the District Court of Appeal was affirmed by the Supreme Court of Florida on November 30, 1976. 342 So.2d 60; (A-12, Appellants' Appendix). The Supreme Court of Florida expressly affirmed that Section 570.15, Florida Statutes, (1975), was constitutional and did not deprive appellants of their right to be free from unreasonable searches and seizures, the right to due process of law and equal protection of the law, or the right to privacy and to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and similar provisions of the Florida Constitution. 342 So.2d 60; (A-15, Appellants' Appendix). The Supreme Court of Florida further held that Section 570.15, Florida Statutes, (1975), gave the Department of Agriculture and Consumer Services statutory authority to require all trucks and trailers to stop at agricultural inspection stations for purposes of inspection regardless of whether such trucks and trailers were used in the production, manufacture, storage, sale or transportation of any article or product regulated by the Department of Agriculture and Consumer Services.

Appellants timely filed a petition for rehearing in the Supreme Court of Florida. The petition for rehearing was denied on February 28, 1977. (A-18, Appellants' Appendix). Appellants thereafter timely filed on March 7, 1977, a notice of appeal seeking review in this Court of the Supreme Court of Florida's final decision and order.

ARGUMENT

The decision of the Florida Supreme Court in this case is eminently correct. Appellants seem to confuse the enforcement authority and responsibility of Florida's road-guard inspection special officers with the "indiscriminate stoppings" proscribed by *Carrol v. United States*, 267 U.S. 132 (1925).

Section 570.15, Florida Statutes, (1975), does not ". . . subject all persons lawfully using the highways to the inconvenience and indignity . . ." of a search, 267 U.S. at 154, as appellants would lead this Court to believe. Rather, the statute authorizes access by specific agricultural officials to certain premises, trucks and motor vehicles used in the agricultural process. To the point of this case, the statute merely requires trucks, and truck or motor vehicle trailers, to stop at any official road-guard inspection station.

Appellants seem to raise, for the first time in their jurisdictional statement, the issue of "roving patrol guards". (Jurisdictional Statement, at 6, 11). This issue was not presented in the proceeding below and therefore is not properly before this honorable Court.

The authorities cited by appellants express uniform concern for the Fourth Amendment limits on search and seizure powers to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals. However, the Florida Statute under attack in this appeal merely allows access to specified places of business, vehicles and records involved in or related to the agricultural process, *so long as such access is not refused* by the owner, agent or manager of such premises or by the driver of such vehicle. In the event of refusal of access, the statute clearly mandates that a search warrant be obtained, or the search be conducted pursuant to the statutory requirement of a warrantless search. The Florida Supreme Court held in its opinion that, "Such in no way impairs appellants' right to be free from *unreasonable* search and seizure, their right to due process of law, or their right to equal protection of the law." (A-16, Appellants' Appendix).

This holding is amply supported by precedent of this Court in the recent case of *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

The question then narrows to the reasonableness of the requirement, contained in section (2) of the statute under discussion, that trucks, and trailers drawn by trucks or motor vehicles, stop for inspection. As the District Court of Appeal logically noted, "Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.' " (A-9, Appellants' Appendix).

Both Florida appellate decisions further recognized that "agricultural inspections appear to be more nearly akin to drivers' license checks than detentions for criminal investigations . . ." (A-11, 16, Appellants' Appendix) and such drivers' license checks have been recognized as reasonable and therefore acceptable in *Myricks v. United States,* 370 F.2d 901 (5th Cir.), *cert. dismissed,* 386 U.S. 1015 (1967), *citing City of Miami v. Aronovitz,* 114 So.2d 784 (Fla. 1959). The stopping of trucks at a weigh station by state authorities, and their subsequent inspection, was approved by the federal courts in *United States v. Rivera-Rivas,* 380 F. Supp. 1007 (D.N.M. 1974), as was the inspection of airline passenger baggage in *United States v. Schafer,* 461 F.2d 856 (9th Cir. 1972).

There is no question but that Section 570.15(2), Florida Statutes, (1975), represents some interference with appellants' right to travel and his right to privacy. *Martinez-Fuerte, supra,* presented a similar situation with a similar intrusion into individual rights. The question now presented is whether the interference involved is or is not an unreasonable interference. *Martinez-Fuerte, supra,* at 1126. The test is one of weighing the competing interests of the parties, and determining who would lose the most if the procedure involved was stricken. *Id.*

Appellee argues that the test has already been undertaken in *Martinez-Fuerte, supra,* and the result there announced, (that the interests of the government justify the interference), answers the question here involved. The balance of interests involved in the case *sub judice* is synonymous with that considered in *Martinez-Fuerte, supra.* Appellee therefore argues that the same result should obtain here.

This Court, in *Camara v. Municipal Court,* 387 U.S. 523 (1967), recognized that in certain instances regulatory enforcement requires procedures which cannot be dealt with in terms of traditional individualized probable cause. In *Camara, supra,* this Court announced the concept of the "area" search warrant. The "area" search warrant was clearly a great relaxation in traditional probable cause requirements, and in reality approached the status of mere formality. In *Martinez-Fuerte, supra,* this Court recognized the futility of "area" warrants in the context of something as mobile as a motor vehicle.

CONCLUSION

The questions attempted to be raised in the jurisdictional statement are unsubstantial. There are no real questions here involved, federal or otherwise, for the question that formerly existed has already been answered by this Court. The appeal should be dismissed, or in the alternative, this Court should affirm the decision below, on the basis of *Martinez-Fuerte, supra.*

Respectfully submitted,

Robert A. Chastain

ROBERT A. CHASTAIN
General Counsel

Frank A. Graham, Jr.

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Attorneys for Appellee

CERTIFICATE OF SERVICE

I, Robert A. Chastain, one of the attorneys for the Department of Agriculture and Consumer Services, State of Florida, and a member of the Bar of the Supreme Court of the United States, hereby certify that, pursuant to Rule 33.3(b) of the Rules of this Court, I served three copies of the foregoing STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO DISMISS AND/OR AFFIRM, by United States Mail to Allan P. Clark of Caven and Clark, P.A., 1216 Atlantic National Bank Building, Jacksonville, Florida 32202, Attorney for Appellants, this 24th day of June, 1977.

Robert A. Chastain

ROBERT A. CHASTAIN
Attorney for Appellee

APPENDIX

INDEX TO APPENDIX

SECTION 570.15, FLORIDA STATUTES (1975)

570.15 Access to places of business and vehicles.—
(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:

1. Places of business;
2. Factories;
3. Farm buildings;
4. Carriages;
5. Railroad cars;
6. Trucks;
7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
8. Truck and motor vehicle trailers;
9. Vessels; and
10. All records pertaining thereto;

used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19.

(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation

of the provisions of this chapter, the rules of the department, or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 59-54; s. 1, ch. 75-215.

SECTION 570.44(3), FLORIDA STATUTES (1975)

570.44 Division of Inspection; powers and duties.—
The Division of Inspection shall be divided into not less than three bureaus as follows:

****

(3) BUREAU OF ROAD GUARDS.—It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director.

History.—s. 1, ch. 59-54, ch. 61-407; ss. 4, 14, 35, ch. 69-106.

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1976

Case No. 76-1674

NORMAN STEPHENSON,
STEPHENSON ENTERPRISES,
INC., a corporation, and
LAKE BUTLER APPAREL
COMPANY, a Florida corporation,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF THE
STATE OF FLORIDA

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND/OR AFFIRM

Allan P. Clark
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Attorney for Appellants

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1976

Case No. 76-1674

NORMAN STEPHENSON,
STEPHENSON ENTERPRISES,
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DEPARTMENT OF AGRICULTURE
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ON APPEAL FROM
THE SUPREME COURT OF THE
STATE OF FLORIDA

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND/OR AFFIRM

INTRODUCTION

The Appellants, Norman Stephenson, Stephenson Enterprises, Inc., a corporation, and Lake

Butler Apparel Company, a Florida corporation, file this reply brief in opposition to Appellee's Motion to Dismiss and/or Affirm the Decision and Order of the Supreme Court of Florida. Appellants received a copy of Appellee's Motion to Dismiss and/or Affirm on June 30, 1977. This reply brief will be limited to answering two contentions set forth in Appellee's Motion to Dismiss and/or Affirm, that is:

1. Appellee's contention that Appellants' Jurisdictional Statement fails to comply with Rule 15 of this Court (see Page 1-2 of Appellee's Motion to Dismiss and/or Affirm); and

2. Appellee's contention that this case involves only the question of requiring trucks and truck or motor vehicle trailers to stop for inspection at Florida's Department of Agriculture road-guard inspection stations (see Page 7 of Appellee's Motion to Dismiss and/or Affirm).

REPLY ARGUMENT TO MOTION TO DISMISS AND/OR AFFIRM

Compliance With Rule 15

In support of Appellee's motion to dismiss, Appellee has concluded at Page 1 of its motion that Appellants have failed to comply with Rule 15 of this Court in the preparation of their Jurisdictional Statement. No supporting reasons nor argument are given in support of this bald assertion of failure to comply with the Court's Rules. Appellants would respectfully submit that Rule 15 has been complied with in all respects.

Roving Patrol Guards

Appellee has mistakenly asserted in its Motion to Dismiss and/or Affirm that the statutes in question involve only compulsory stoppings at fixed point locations, known as Florida Department of Agriculture road-guard inspection stations. See Page 7 of Appellee's Motion to Dismiss and/or Affirm. Appellee further erroneously contends that the issue of "roving patrol guards" has been raised for the first time on this appeal. See Page 7 of Appellee's Motion to Dismiss and/or Affirm. An affidavit was filed by an employee of Appellee in the trial court, the Baker County Circuit Court of Florida, verifying that roving inspectors were utilized by the Florida Department of Agriculture and Consumer Services, that the affiant was such a "roving inspector" and that he stopped one of Appellants' vehicles at other than a fixed point inspection station. This affidavit is reprinted in this reply brief in full. A. 1. When the trial court in and for the Eighth Judicial Circuit, Baker County, Florida, issued its order denying Appellants' request for summary judgment, it had before it the affidavit of the Department of Agriculture's roving inspector and concluded in its order, inter alia, that ". . . it is within the police powers of the state to cause to stop for inspection all trucks operating on the public highways . . ." See Appendix attached to Appellants' Jurisdictional Statement at Page A-4.

The fact that the Florida Department of Agriculture utilizes both fixed point inspection stations and roving inspectors who stop vehicles even when the vehicles are not at fixed road-guard inspection stations, was initially brought to the attention of the trial court in and for the Eighth Judicial Circuit,

Baker County, Florida, and has been part of the record in the proceedings below at all stages. Additionally, this point was further argued before the Supreme Court of the State of Florida in Appellants' Reply Brief at Pages 3-4, which are incorporated in this Reply Brief at page A.3.

Section 570.15(1), Florida Statutes,[1/] as construed by the Courts below, grants to employees and officers of the Department of Agriculture and Consumer Services

> ". . . full access . . . to all . . . trucks, motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag; (and) truck and motor vehicle trailers . . ."

This is the statutory premise upon which the stoppings and inspections are made at both fixed and roving location points. Subsection (2) of Section 570.15, Florida Statutes, makes it a criminal misdemeanor for any operator of a truck or motor vehicle trailer to pass any road-guard inspection station without first stopping for inspection. While this latter subsection imposes criminal sanctions, it does not dilute nor curtail the actual implementation of §570.15(1) which has been construed by the trial court below to permit the State of Florida to ". . . cause to stop for inspection all trucks operating on the public highways . . ." (Emphasis added.) See Appendix to Appellants' Jurisdictional Statement at A-4.

1/ The statutes in question are set out in full in Appellants' Jurisdictional Statement at pages 3-5.

CONCLUSION

For the foregoing reasons and for the reasons set forth in Appellants' Jurisdictional Statement, Appellants respectfully suggest that the Court should deny Appellee's Motion to Dismiss and/or Affirm.

Respectfully submitted,

CAVEN & CLARK, P.A.

By _____
Allan P. Clark

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been furnished to Robert A. Chastain, General Counsel, State of Florida, Department of Agriculture and Consumer Services, and to Frank A. Graham, Jr., Resident Counsel, State of Florida, Department of Agriculture and Consumer Services, Room 513, Mayo Building, Tallahassee, Florida, 32304, by United States Mail, this 1st day of July, 1977.

_____
Attorney

APPENDIX

IN THE CIRCUIT COURT,
EIGHTH JUDICIAL CIRCUIT,
IN AND FOR BAKER COUNTY,
FLORIDA

NORMAN STEPHENSON,
LAKE BUTLER APPAREL
COMPANY, a corporation,
and STEPHENSON ENTER-
PRISES, INC., a corporation,

Plaintiff, NO. 73-147

-v-

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Defendant.

AFFIDAVIT IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT

STATE OF FLORIDA
COUNTY OF BRADFORD

Before me, the undersigned authority, personally appeared J.R. Sikes who, upon first being duly sworn, deposes and says:

1. That I ~~am~~ was a roving inspector for the Bureau of Road Guard of the Division of Inspection of the State of Florida Department of Agriculture and Consumer Services and **have** served in that capacity at all times pertinent to this law suit.

2. That on Friday, December 14, 1973, while covering my route as a road guard inspector I observed a pickup truck turn the corner at the junction of State Roads 121 and 2 and by observing the truck, I noted that it was loaded with something and pursued the same. The pickup truck accelerated its speed as if it was trying to beat me to the Georgia-Florida state line and I pulled up along side of the truck and turned on the blue light on my vehicle but the truck did not stop until after it got into Georgia.

3. That I pursued the truck into Georgia and when it came to a stop, the occupant, Norman Stephenson, asked me, "Who are you and what do you want?" When I identified myself, he told me to "go to hell" and drove off. I then called station #14 by radio and asked them to call Charlton County Sheriff, Ray Gibson, for assistance and I then followed the pickup truck to St. George and waited at the truck stop to see if the pickup truck was going south on Georgia State Road 121 before following it. The pickup truck only went south about two-tenths mile, turned around and headed north and I stopped Stephenson again. This time he told me to just forget about him, then got in his truck, turned around and headed south.

4. That I followed Stephenson until he stopped somewhere between St. George, Georgia, and Macclenny Road Guard Station. This time I did not get out of my car but just waited to see what he was going to do. Stephenson then got out and yelled back to me to "cut out your lights and you're liable to get hurt out here." He then got in his truck and drove off again.

5. That when Stephenson got to the Macclenny Road Guard Station that he ran it without even slowing down. I then stopped and asked inspector, D. L. Norman, to call the Sheriff's office and have the pickup

truck stopped in Macclenny. Two Baker County Deputy Sheriffs stopped the pickup truck ~~at the junction of~~ on State Roads 121 and near Highway 90. At this time, Stephenson got out of his truck and began to give the deputies a hard time. He was then placed under arrest and carried to the Baker County jail and placed under bond.

Further affiant sayeth not.

/s/ J. R. Sikes
J. R. Sikes

(Beginning of Page 3 of Reply Brief of Appellants filed in the Supreme Court of the State of Florida)

Department of Agriculture does not grant to the Department unbridled discretion to stop all vehicles to determine what is being transported.

II. SECTIONS 570.15 AND 570.44(3), FLORIDA STATUTES, AS CONSTRUED BY THE DISTRICT COURT, DENY APPELLANTS' RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE, THEIR RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW, THEIR RIGHT TO PRIVACY AND THE RIGHT TO TRAVEL FREELY ON THE HIGHWAYS OF THE UNITED STATES AS GUARANTEED BY BOTH THE UNITED STATES AND THE FLORIDA CONSTITUTIONS.

A. Section 570.15(2), Florida Statutes (as amended in 1975) is Unconstitutional on its Face
B. Florida Statutes §570.15(1)(b) Does Not Save the Constitutionally Impermissible Requirements of §570.15(2)

Appellee maintains that Section 570.15(1)(b) and the Department's policy in securing search warrants satisfies the requirements of the Fourth Amendment to the United States Constitution and Section 12 of the Declaration of Rights of the Florida Constitution. See Page 6 of Appellee's brief. The Department's own affidavits filed in opposition to Appellants' motion for summary judgment in the trial court patently destroy any notion that the Department is complying with constitutional mandates. The Department maintains "roving inspectors" who stop vehicles even when such vehicles are not at road guard inspection stations. See affidavit of J. R. Sikes, Roving Inspector for the Bureau of Road Guard of the Division of Inspection of the State of Florida, Department of Agriculture and Consumer Services. A.7. In the case at bar, one of these roving inspectors pursued the actual policy of the Department of Agriculture when he indiscriminately stopped one of the Appellants in this case because he noted ". . . that it (appellant's motor vehicle) was loaded with something and pursued the same . . ." A.7. The Department's policy of using roving inspectors is strikingly similar to United States Border Patrol roving inspectors whose activities were held to be unconstitutional and in violation of the Fourth Amendment in Almeida-Sanchez v. United States, 413 U.S. 266, 37 L.Ed.2d 596 (1973).

Finally, Appellee erroneously asserts that in the enforcement of inspection laws, the Fourth Amendment's search warrant requirement may be put asunder. See page 8 of Appellee's brief. This erroneous notion automatically flows from Appellee's mistaken reliance upon the continued vitality of Frank v. State of Maryland, 359 U.S. 360, 3 L.Ed.877, 79 S.Ct. 804. Any vitality that Frank v. Maryland, supra, had in regard to an

administrative exception to the Fourth Amendment search warrant requirement was sapped when the Supreme Court of the United States subsequently held that Frank v. Maryland was no longer controlling on this issue. See Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1967). In Camara v. Municipal Court, supra, the Court, in expressly rejecting the contention that administrative searches need not be prosecuted within the Fourth Amendment's search warrant framework held that:

. . . .
